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OFFICE OF PETITIONS

In re Application of
Zalenski, Papp, Cooney, Milota, Mostowfi
Application No. 10/613,656
Filed: July 3, 2003,
Attorney Docket No. 2870-001CIP

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: DECISION
: DISMISSING PETITION
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This application has been referred to this office in light of the communication filed November 12, 2004, by an attorney not of record on behalf of a non-signing inventor, which is being treated as a petition seeking acceptance of a power of attorney by less than all the joint inventors.

The petition is dismissed.

The above-identified application was accorded Rule 47 status in the absence of the making of this application by joint inventor Mostowfi. In such situations, any subsequent communications filed by the non signing inventor are merely placed in the file. See MPEP 409.03(j). Furthermore, a non-signing inventor is not entitled to a hearing (Cogar v. Schuyler, 464 F.2d 747, 173 USPQ 389 (D.C. Cir. 1972)), and is not entitled to prosecute the application if status under 37 CFR 1.47 has been accorded

Here, however, on November 12, 2004, the non-signing inventor filed a communication containing a combined declaration and power of attorney allegedly "appointing" Naren Chaganti No. 44,602 as his registered representative. Chaganti, in turn, asserts that the parties are in litigation, that Mostowfi is the sole inventor, and seeks to change the correspondence address. Chaganti's request for a change of correspondence address is summarily **denied**. **A registered practitioner who is not of record may not change the correspondence address herein. See MPEP 403.**

However, petitioner appears to be unaware of the significance of the fact that this application has been accorded Rule 47 status due to Mostowfi's refusal to join with the other named inventors in signing the declaration filed under 37 CFR 1.63. Since petitioner has refused to join with the other named inventors in signing the declaration herein, the procedure set forth in MPEP 402.10 requiring a petition under 37 CFR 1.182 seeking appointment of diverse counsel does not apply to this case. Rather, that procedure is only available to those inventors who have already jointly signed the oath or declaration and then seek diverse representation.

The declaration under 37 CFR 1.63 signed by Mostowfi that was proffered with the instant petition asserts only his sole inventorship and manifestly does not recognize the other named inventors as

being joint inventors in the above-identified application. As such, Mostowfi cannot properly said to have "joined" in this application at this time within the meaning of MPEP 409.03(i). As further noted in that MPEP section, a non signing inventor is not entitled to prosecute the application in which he refuses to join.

Should non-signing inventor Mostowfi subsequently join in this application by executing an appropriate oath or declaration acknowledge the other joint inventors, any future request for a separate power of attorney for Chaganti will require the agreement of the other signatory inventors. See MPEP 409.03(i), which further notes:

If a nonsigning inventor feels that he or she is the sole inventor of an invention claimed in a 37 CFR 1.47 application naming him or her as a joint inventor, the nonsigning inventor may file his or her own application and request that his or her application be placed in interference with the 37 CFR 1.47 application. If the claims in both the nonsigning inventor's application and the 37 CFR 1.47 application are otherwise found allowable, an interference may be declared.

A courtesy copy of this decision is being mailed to counsel Chaganti who filed the petition of behalf of Mostowfi on a one time basis only. The USPTO will not undertake dual correspondence. See 37 CFR 1.33(a).

Petitioner's "representative" is placed on notice that the Office considers the filing of a petition or other paper on behalf of a party, as here, having no standing in an application, and not otherwise authorized by the rules of practice, to be a petition or paper presented for an improper purpose (37 CFR 10.18). For example, the filing of a paper on behalf of a party in situations not authorized by the rules of practice delays the examination and processing of applications, which may cause harm to the general public if it results in the Office missing any one of the examination time frames specified in 35 U.S.C. §§ 154(b)(1)(A) or 154(b)(1)(B). Therefore, the Office may refer any further third party petitions in this or any other application to the Office of Enrollment and Discipline for appropriate action.

Telephone inquiries related to this decision, from persons other than Chaganti or Mostowfi, should be directed to the undersigned at (571) 272-3217.



Brian Hearn
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cc:
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